IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1750 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MITHUSINH SAMRATSINH PARMAR - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DR BHATT for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR VIRENDRA BAHETI for Respondent(s) : 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4,4.2.5

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/06/2006

ORAL JUDGMENT

1. Rule. Mr. Mengdey, learned AGP waives notice of rule for respondent Nos. 1 to 3. Mr. Baheti, learned counsel waives notice of rule for

respondent Nos. 4a to 4e. With consent of the learned advocate appearing for both the sides, the matter is finally heard today.

2. The only question that arise in the present case for the consideration of the Court is whether the principles of *res judicata* will be applicable to the decision of the Revenue Authority on administrative side for non-approval of the entry ex-parte without giving any opportunity of hearing to the person concerned?

3. To appreciate the aforesaid aspects, certain facts which can have the bearing to the present case are as under :

4. The petitioner appears to have been purchased the land bearing Survey No. 11 vide Registered Sale Deed dated 07.12.1994 at village Dungarpur. It appears that based on the said Registered Sale Deed, Entry No. 139 was recorded in the Village Form No. 6 of Village Dungarpur on 23.12.1994. It appears that thereafter, for the very transaction, once again, mutation entry was recorded vide No. 145 on 20.02.1996 in Village Form No. 6. The said entry is certified by the Deputy Mamlatdar on 30.03.1996. It appears that thereafter, the District Collector, Bhavnagar, issued notice for exercise of revisional power. The show-cause notice was issued and thereafter,

the District Collector found that the competent authority had no power to enter entry once again and the petitioner ought to have preferred the appeal against the first decision of not approving the entry and the entry is barred by the principles of *res judicata* and therefore, the second entry No. 145 is set aside. The petitioner carried the matter before the State Government by preferring revision and in the said revision, the State Government instead of considering the aspects of applicability of principles of *res judicata,* examined the matter on the ground that it was not examined by the competent authority that the petitioner is agriculturist or not. It is also mentioned by the State Government that the petitioner ought to have preferred an appeal against the non-approval of the Entry No. 139 and therefore, ultimately, the revision has been dismissed. It is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

5. Section 135C of the Code provides for reporting of the acquisition of the rights by any person of the land. It is required for the person concerned to intimate the concerned village accountant whenever rights are acquired. However, if the person has acquired the right by virtue of a registered document, he is exempted from reporting to the village accountant.

Section 135D of the Act provides for mandatory requirement on the part of the village accountant to register all information which has been received by him under Section 135C of the Act. Sub-section 2 of Section 135D of the Act provides that whenever any entry is made, the same is required to be placed at the conspicuous place in the chavdi and written intimation is to be given to all persons appearing from the record of rights or register of mutations to be interested in the mutation. If the objections are received, such mutation is required to be transferred to the dispute register of disputed cases and if there is no objection, the entry may be approved by the higher officer. Such powers are to be exercised read with the relevant rule 104, 105 & 106 of the Gujarat Land Revenue Rules. Therefore, unless the entry is disputed, the same is in normal circumstances to be approved provided proper procedure is followed and necessary material is produced for acquisition of the rights. But thereby, it cannot be said that even if the transaction is is in breach of any statutory provision, the officer approving the entry is required to shut his eyes and to approve the entry. In the event, the officer before whom the entry is place for approval, prima facie find that the transaction is void or is in breach of any

statutory provision, it is required for the officer concerned to issue notice to the person who is said to have acquired right by Registered Sale Deed. If such notice is issued, the entry is required to be transferred to the register of disputed cases and the competent officer who is having power to decide the disputed cases is required to hear the affected parties including the person who has acquired the right in the property and then the appropriate decision is required to be rendered for maintaining of the entry or cancellation thereof. However, if the entry is not approved in exercise of the administrative power or without issuing the notice to the affected person, who has acquired the right in the property, such action can be said as purely an administrative action and it cannot be equated with the exercise of power by officer after hearing the affected person while deciding the entries of disputed cases. To say in other words, if a person has acquired the right by a Registered Sale Deed, even if he has not intimated to the village accountant, the concerned village accountant is required to enter the said transaction in the revenue record, if he receives the information in the statement of Registered Sale Deed and after following the procedure, as required under Rule 105, the same is required to be placed under Rule 106 before the Circle Inspector or the Officer having power to examine the entry. If

there is no objection to the approval of the entry, the officer may approve the entry and if he finds that there is any objection to be considered or that proper procedure is not followed or some document is/are missing, then he may not approve the entry but exercise of powers at that stage for non-approval of the entry without issuing notice to the person who has acquired the right or interest in the property by Registered Sale Deed remains as an administrative action. It is only after the notice is issued to the affected person who has acquired interest in the property and thereafter, the entry is transferred to the register of disputed cases and after hearing both the sides, the officer having power to decide the disputed cases renders the decision, such an exercise of power by such officer can be said as exercise of power as Quasi Judicial Authority. Therefore, until the action of approval or non-approval of the entry in the first register of entries without it being transferred to the register of disputed case, the exercise of the power is only an administrative and not as a Quasi Judicial Authority.

6. It is well settled that the principles of *res judicata* would apply in a matter where the power is exercised by judicial authority. Even when the powers are exercised by a Quasi Judicial

Authority, the principle analogous to the principles of *res judicata* may apply but, such principles in normal circumstances would not apply to any administrative action or exercise of administrative power.

7. If the matter is examined keeping in view the aforesaid observation, it does appear from the record that the first action of non-approval of the Entry No. 139 was an administrative action on the part of the Deputy Mamlatdar. Neither the District Collector nor the State Government have found that any notice was issued to the petitioner before taking decision of non-approving the entry nor there is any finding that after such notice, the entry was transferred to the register of disputed cases and after hearing the affected parties, the decision was rendered by the competent authority.

8. Under these circumstances, the applicability of the principles of *res judicata* to the earlier decision of not approving the Entry No. 139 by the District Collector as well as the State Government is an error apparent on the face of record and the order to that extent cannot be sustained in the eye of law. Both the authorities have committed jurisdictional error by not considering that if the entry is not approved by aforesaid administrative action,

again entry can be recorded for acquisition of rights by village accountant.

9. So far as the aspects for not maintaining the entry on the ground that the petitioner is not an agriculturist is concerned, no notice has been issued for cancellation of the Entry No. 145 on such ground and therefore, the reasons recorded by the State Government while rejecting the revision for maintaining the order of the Collector is beyond the scope of the show-cause notice. Since there is no show-cause notice, on that ground, such aspects may not stand concluded and at this stage, since such ground was not in the show-cause notice, I find that it would be necessary for this Court to conclude on the aspects as to whether, such entry can be maintained, if a person is an agriculturist in the other State or is not agriculturist. Such ground may be examined at an appropriate stage after considering the rights and contentions of both the sides including that of delay and of altering the position etc. and all such questions are kept open.

10. In view of the aforesaid observations and discussions, the impugned orders passed by the District Collector and its confirmation thereof by the State Government cancelling the Entry No. 145 are quashed and set aside with the observation that in the event the proceedings

are initiated for cancelling of Entry No. 145 on the ground that the petitioner is not an agriculturist, the petitioner shall be at the liberty to raise all contentions, which may be available in law against such proceedings at that time.

11. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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